

# **BACKGROUND PAPER ON ELECTORAL REFORMS**

(PREPARED BY THE CORE-COMMITTEE ON ELECTORAL REFORMS)

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MINISTRY OF LAW AND JUSTICE  
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## I. Executive Summary

India stands as a model for many emerging democracies around the world. Free and fair elections are the hallmark of a well functioning democracy. While we are justifiably proud of our democracy, there are a number of areas which need to be strengthened for us to realise the true potential of a well functioning democracy. Our election system, from the selection of candidates, to the manner in which funds are raised and spent in election campaigns, are in dire need of significant changes.

There has been a growing concern over the years in India about several aspects of our electoral system. The Election Commission has made changes in several areas to respond to some of the concerns. There have also been a number of committees which have examined the major issues pertaining to our electoral system and made a number of recommendations. But there remain some critical issues that might need legislative action to bring about the required changes.

The criminalisation of our political system has been observed almost unanimously by all recent committees on politics and electoral reform. Criminalisation of politics has many forms, but perhaps the most alarming among them is the significant number of elected representatives with criminal charges pending against them. Two measures recommended by previous committees are discussed in this paper: enforcement of the disclosure of criminal antecedents of candidates, and eligibility restrictions for candidates with criminal cases pending against them.

The financing of elections has become a major issue in the past few decades. It is widely believed that the cost of fighting elections has climbed far above the legal spending limits. This has resulted in lack of transparency, widespread corruption, and the pervasiveness of so-called 'black money'. This paper summarises proposals made on the following issues: limits on campaign expenditure, disclosure and audit of assets and liabilities of candidates and parties, methods of reducing the cost of political campaigns, as well as state funding of elections.

The conduct of elections also has a number of issues that need to be addressed. While the massive size of the electorate makes holding elections a daunting task, it should not serve as a justification for the presence of issues such as booth capturing, intimidation of voters, tampered electoral rolls, large-scale rigging of elections and other polling irregularities; the proliferation of non-serious candidates; and the abuse of religion and caste in the mobilization of voters. Potential solutions to these problems are outlined in this paper.

This paper also takes consideration of major issues dealing with the role of political parties in the electoral system: proliferation of non-serious parties; process of recognition and de-recognition of political parties; disclosure of assets and liabilities of parties; and audit and publishing of assets and liabilities.

Resolution of election petitions and disputes, as well as rulings on defections, are two important processes seen to be operating in a slow and inefficient manner by many previous committees. This paper reviews recommendations made to mitigate these problems.

The Ministry of Law and Justice, Government of India, has constituted a Committee on Electoral Reforms. The main purpose of the Committee is to recommend to the government concrete ways in which our electoral system can be strengthened. The Committee will take into account the opinions of political leaders, Government servants, legal experts, NGOs, scholars, academics, journalists, and other stakeholders.

The purpose of this background paper is to recap some of the key issues with our electoral system, and to briefly examine the recommendations made by some recent committees in this regard. It is hoped that this background paper will be a starting point to renew a national dialogue on the important changes that need to be brought about to strengthen our electoral system.

## II. Approach to Background Paper

*The purpose of this paper is to provide background information on issues in our electoral process and outline some electoral reform options that have been considered in the past, in order to serve as a platform for a renewed national dialogue on electoral reforms.*

- 2.1 In this background paper, the Committee on Electoral Reforms does not endeavour to make any recommendations of its own; rather it presents the recommendations made by various committees to date in order to fulfil its purpose of providing background information for substantive dialogue in regional and national consultations.
- 2.2 The topic of electoral reforms has been taken up by numerous government committees in the recent past, including but not limited to:
- Goswami Committee on Electoral Reforms (1990)
  - Vohra Committee Report (1993)
  - Indrajit Gupta Committee on State Funding of Elections (1998)
  - Law Commission Report on Reform of the Electoral Laws (1999)
  - National Commission to Review the Working of the Constitution (2001)
  - Election Commission of India – Proposed Electoral Reforms (2004)
  - The Second Administrative Reforms Commission (2008)
- 2.3 There has also been a great deal of substantive work on the topic of Electoral Reforms undertaken by various civil society groups, which have contributed significantly to the public discourse on the subject. While acknowledging the contribution of these groups, the Committee limits its discussion of reform recommendations in this paper to those published by the committees mentioned above.
- 2.4 A number of committees have discussed major structural reforms of the electoral system, such as a shift away from the First Past the Post (FPTP) system of representation. We will explore options for electoral reform within the framework of the current system and will not address these larger structural issues in this paper.
- 2.5 This background paper is also being made available on the website of the Law Ministry. It is hoped that many more stakeholders will be able to provide inputs either online or by post to the Ministry of Law and Justice, Government of India. The work of this Committee will be enriched by such inputs, and the Committee looks forward to wide participation in the weeks ahead from experts and ordinary citizens.

### III. Introduction

- 3.1 The founding fathers of India opted for a Parliamentary democracy as the appropriate model for a large and diverse country like ours. The general elections in India are a mammoth exercise, with over 700 million voters, and about one million polling booths in the country. This awe inspiring effort is widely hailed as a model for the conduct of free and fair elections.
- 3.2 In our experience of holding elections for six decades, a number of issues have come to the fore from time to time. Legislative changes were made, the Election Commission developed a Code of Conduct, and passed several strictures with a view to conducting elections in a smooth manner. But in recent years, there have been some alarming trends that have been noticed which can potentially jeopardise the democratic freedoms we enjoy in India today.
- 3.3 At a more fundamental level, if citizens do not have faith in the way our elected representatives are chosen, there is danger to the very idea of democracy itself. Widely held views among the public with regard to criminalisation of politics, the use of money power in securing votes, the paid-news disease are some of the issues that are enlarging the trust deficit with regard to our elections. This needs to be stemmed at the earliest and in a clear and transparent manner to regain the trust of the citizens in our democratic process.
- 3.4 Civil society groups, journalists, and other observers of the process have been playing an important role in identifying a number of the weaknesses of our existing system. There have been efforts to use the courts to seek to push reform on this important issue. The widely known practice of every candidate having to declare their assets, liabilities and pending criminal cases came about as a result of a landmark court judgement.
- 3.5 The Election Commission has been at the forefront of initiating efforts to strengthen the electoral system. But its own mandate can sometimes be a limiting factor. In this context it would be necessary to examine the issue with regard to the legislative and other changes that will be required to make the electoral system work better for all our citizens.
- 3.6 In recent years a number of committees have examined several aspects of our electoral process and have recommended important changes to the system. Some of these recommendations have been implemented and yet there is much more to be done.

3.7 In order to take the agenda forward, the Ministry of Law and Justice, Government of India has constituted a Committee on Electoral Reforms. This Committee seeks to hold regional consultations followed by a national consultation in order to develop a set of actionable recommendations. Every effort would be made by this Committee to reach out to a wide set of experts and stakeholders and to benefit from the insights and experience of all concerned. The objective of these recommendations would be to provide the basis of developing legislative and other proposals which can then be taken forward.

## IV. Criminalisation of Politics

***Most recent Committee reports on electoral reforms have almost universally acknowledged the criminalisation of our political system at both national and state levels and across party lines.***

The criminalisation of our political system has been observed almost unanimously by all recent committees on politics and electoral reform. Criminalisation of politics has many forms, but perhaps the most alarming among them is the significant number of elected representatives with criminal charges pending against them. Two measures recommended by previous committees are discussed in this paper: enforcement of the disclosure of criminal antecedents of candidates, and eligibility restrictions for candidates with criminal cases pending against them.

The Vohra Committee Report on Criminalisation of Politics was constituted to identify the extent of the politician-criminal nexus and recommend ways in which the menace can be combated. In Chapter 4 of the report of the National Commission to Review the Working of the Constitution, cites the Vohra report as follows: “The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country” and that “some political leaders become the leaders of these gangs/armed senas and over the years get themselves elected to local bodies, State assemblies, and national parliament.” This point becomes self evident when one looks at the number of elected representatives with pending criminal cases against them at all levels in our federal system. A number of remedies have been proposed by the various committees on the criminalization of politics in the country.

### 4.1 Disclosure of criminal antecedents of candidates

Currently, Rule 4A of the Conduct of Election Rules, 1961, prescribes that each candidate must file an affidavit (Form 26 appended to Conduct of Election Rules, 1961) regarding (i) cases, if any, in which the candidate has been accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court, and (ii) cases of conviction for an offence other than any of the offences mentioned in Section 8 of Representation of the People Act, 1951, and sentenced to imprisonment for one year or more. In addition to this, pursuant to the order of the Supreme Court the Election Commission on March 27, 2003, has issued an order that candidates must file an additional affidavit stating (i) information relating to all pending cases in which cognizance has been taken by a Court, (ii) assets and liabilities, and (iii) educational qualifications. The affidavit is given in a form prescribed by the Election Commission of India.



Section 125A of the R.P. Act, 1951 prescribes penalties for withholding or providing incorrect information on Form 26, which amount to imprisonment of up to six months, or fine, or both.

In its report entitled Proposed Electoral Reforms, 2004 the Election Commission of India notes that “in some cases, the candidates leave some of the columns blank...there have been cases where candidates are alleged to have given grossly undervalued information.”

#### ❖ Recommendations

In its report on Proposed Election Reforms, 2004, the Election Commission of India recommended that an amendment should be made to Section 125A of the R.P. Act, 1951 to provide for more stringent punishment for concealing or providing wrong information on Form 26 of Conduct of Election Rules, 1961 to minimum two years imprisonment and removing the alternative punishment of assessing a fine upon the candidate. It also recommended that Form 26 be amended to include all items from the additional affidavit prescribed by the Election Commission, add a column requiring candidates to disclose their annual declared income for tax purpose as well as their profession.

The Law Commission of India Report on Reform of the Electoral Laws, 1999, suggested that an amendment be made to the Representation of the People Act, 1951, to insert a new section 4A after section 4 to make declaration of assets and criminal cases pending against the candidate part of the qualifications necessary for membership to the House of the People.

## **4.2 Eligibility of candidates with criminal cases pending against them**

Section 8 of the Representation of the People Act, 1951, provides for disqualification of candidates from contesting an election on conviction by a Court of Law. In subsection (1), it lists certain crimes and stipulates a disqualification period of six years from the date of conviction. In subsection (2) it lists a different set of crimes and provides for the candidate to be disqualified from the date of conviction and for a period of six years since his release. In subsection (3), it provides that any candidate convicted for a crime for which the minimum imprisonment is two years shall also be disqualified from the date of conviction and will continue to be disqualified for six additional years after his release.

## ❖ Recommendations

The Election Commission proposed in its 2004 report that Section 8 of the Representation of the People Act, 1951 should be amended to disqualify candidates accused of an offence punishable by imprisonment of 5 years or more even when trial is pending, given that the Court has framed charges against the person. In the report the Commission addresses the possibility that such a provision could be misused in the form of motivated cases by the ruling party. To prevent such misuse, the Commission suggested a compromise whereas only cases filed prior to six months before an election would lead to disqualification of a candidate. In addition, the Commission proposed that Candidates found guilty by a Commission of Enquiry should stand disqualified.

The report “Ethics in Governance” of the Second Administrative Reforms concurred with the recommendation of the Election Commission.

In Chapter 4 of its report, the National Commission to Review the Working of the Constitution proposed several measures. Firstly, it proposed that Section 8 of the Representation of the People Act, 1951, be amended such that a candidate accused of an offence punishable by imprisonment of 5 years or more be disqualified on the expiry of a period of one year from the date the charges were framed against him, and unless cleared during that one year period, he shall remain disqualified until the conclusion of his trial. It also recommended that in case a candidate is convicted by a court of law and sentenced to imprisonment of six months or more, he shall be disqualified during the period of the sentence and for six additional years after his release. Candidates violating this provision should be disqualified and political parties putting up such a candidate with knowledge of his antecedents should be derecognised and deregistered. Thirdly, the Commission has stated that any person convicted for any heinous crime such as murder, rape, smuggling, dacoity, etc., should be permanently barred from contesting political office. Finally, the Commission proposes the establishment of Special Courts to decide cases against candidates within a period of six months or less. Potential candidates against whom charges are pending may take the matter to the Special Court, which can decide if there is indeed a prima facie case justifying the framing of the charges. Special Courts would be constituted at the level of High Courts and decisions would be appealable only to the Supreme Court.

The 1999 Law Commission of India Report takes a separate stand, suggesting that Section 8 remain unchanged. It suggests, however, the addition of a new section – Section 8B, which would provide a separate set of penalties for electoral offences and offences having a bearing upon the conduct of elections under sections 153A and 505

IPC and serious offences punishable with death or life imprisonment. The proposed Section 8B would provide that framing of charges shall be a ground of disqualification but this disqualification shall last only for a period of five years or till the acquittal of the person of those charges, whichever event happens earlier. If a candidate is found guilty they would automatically be disqualified under Section 8.

### **4.3 Negative or Neutral Voting**

The criminalisation of politics, widespread corruption in the system, and use of violence, voter intimidation, etc may result in there being no desirable candidates within those contesting elections in a particular constituency. Currently there is no way for voters to express their dislike for all candidates. The lack of such a provision may further contribute to the decay in the system in such cases by encouraging only those voters who support such compromised candidates to vote, returning those same leaders to power again and again.

#### **❖ Recommendations**

Both the Election Commission and Law Commission of India recommend that a negative or neutral voting option be created. Negative/ neutral voting means allowing voters to reject all of the candidates on the ballot by selection of a “none of the above” option instead of the name of a candidate on the ballot. In such a system there could be a provision whereas if a certain percentage of the vote is negative/neutral, then the election results could be nullified and a new election conducted.

## V. Financing of Elections

*It is widely believed that in many cases successfully contesting an election costs a significant amount of money that is often much greater than the prescribed limits.*

A Consultation Paper to the National Commission to Review the Working of the Constitution, 2001, noted that “the campaign expenditure by candidates is in the range of about twenty to thirty times the legal limits”.

There are many negative social impacts of this high cost. Chapter 4 of the Report of the National Commission to Review the Working of the Constitution, 2001, notes that the high cost of elections “creates a high degree of compulsion for corruption in the public arena” and that “the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts, etc.” It also states that “Electoral compulsions for funds become the foundation of the whole super structure of corruption”.

A number of remedies have been recommended by previous committees for curbing the negative impact of the high cost of elections:

### 5.1 Official limits on campaign expenditure

Currently, limits on campaign expenditure are fixed at certain amounts depending on the nature of the election. However, it is believed that these limits are violated with audacity. This is mainly attributed to the fact that the actual cost of running an election campaign is often much greater than the prescribed spending limit.

#### ❖ Recommendations

The National Commission to Review the Working of the Constitution, 2001, recommended that the existing ceiling on election expenses for the various legislative bodies should be suitably raised to a reasonable level reflecting increasing costs. The ceiling is currently Ra 25 lakhs for a Lok Sabha seat and Rs 10 lakh for an Assembly seat. In order to cope with rising expenditures over time, this ceiling should be fixed by the Election Commission from time to time and should include all the expenses by the candidate as well as by his political party or his friends and well-wishers and any

other expenses incurred in any political activity on behalf of the candidate by an individual or corporate entity.

A Consultation Paper to the National Commission to Review the Working of the Constitution, 2001, entitled "Review of the Working of Political Parties Specially in Relation to Elections and Reform Options" largely concurred with the above opinion but also suggested a much bolder one: (a) either the statutory limit should be scrapped altogether and replaced by a selective ban on certain kinds of expenditure. Or the existing provisions should be amended to provide for: (i) much higher ceiling than what currently exists; (ii) regular revision of the ceiling before every general election; (iii) all the expenditure, irrespective of who paid for it, to be brought within the purview of this provision; (iv) mechanism for routine verification /auditing of the return of the expenditure; and (v) publicity of the returns filed by the candidate in the local press.

The Election Commission of India recommends that the ceiling on election expenditure be rationalized from time to time.

## 5.2 Disclosure audit of assets and liabilities of candidates

In an order dated March 27, 2003, the Election Commission of India issued an order, in pursuance of the Supreme Court judgment dated March 13, 2003 in the *Peoples Union for Civil Liberties & Another Vs. Union of India* case, that candidates for electoral office must submit an affidavit disclosing his assets and liabilities.

It has been noted by the Election Commission of India in its report Proposed Electoral Reforms, 2004, that "there have been many cases where the candidates are alleged to have given grossly undervalued information, mainly about their assets."

### ❖ Recommendations

The National Commission to Review the Working of the Constitution recommended a follow-up action to the declaration of assets and liabilities by candidates - that the particulars of the assets and liabilities of both candidates and political parties should be audited by a special authority created specifically under law for this purpose. Accounts of candidates and parties should be monitored through a system of checking and cross-checking through the income tax returns filed by candidates, parties, and their well wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.

In 2004 the Election Commission recommended that an amendment be made to Form 26 of Conduct of Election Rules, 1961, to include disclosure of assets and liabilities by candidates. To enforce complete compliance by candidates on Form 26, the Commission recommended that Section 125A be amended such that there is more stringent punishment for concealing or providing wrong information on the form. The amendment would provide for minimum two years imprisonment and removal of the alternative punishment of assessing a fine upon the candidate.

### **5.3 Curbing the cost of campaigning**

It has been noted by previous committees that in order to remedy the negative impact of the excessive cost of elections, the first step should be to reduce the cost of elections themselves.

#### **❖ Recommendations**

It was observed by both the Indrajit Gupta Committee on State Funding of Elections, 1999, and the National Commission to Review the Working of the Constitution, 2001, that many of the tools used for campaigning – such as wall writings, rallies on public property, using loudspeakers for campaigning – are not only costly, but are also a public nuisance. Curbing these activities can both reduce the public nuisance caused by them and also reduce the amount of money needed to fight elections. For this purpose the Committees suggested that a suitable law should be enacted providing penalties or reasonable restrictions against damaging or desecrating public or private property by candidates, political parties, or the agents, through painting of slogans or erecting cut-outs and hoarding or putting up banners and buntings, wall writings, hoisting of flags (except at party offices, party offices, public meetings and other specified places), etc.

In addition, the National Commission to Review the Working of the Constitution, 2001, suggested the following measures: (i) State and Parliamentary level elections, to the extent possible, should be held at the same time; (ii) the campaign period should be reduced considerably, and (iii) candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

### **5.4 State Funding of Elections**

A major concern associated with the high cost of elections is that it prevents parties and candidates with modest financial resources from being competitive in elections. It is also

feared that if candidates need to raise funds from a variety of sources, then their policy decisions after being elected as policy makers may be somewhat biased in favour of groups that fund them. State funding of elections (in various forms) has been proposed as a potential solution to this problem.

#### ❖ Recommendations

The Indrajit Gupta Committee on State Funding of Elections, 1998, backed the idea of state funding of elections on principle, stating that “The Committee see full justification constitutional, legal as well as on ground of public interest, for grant of State subvention to political parties, so as to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources.” It added two limitations, namely (i) such funds could not be doled out to independent candidates, and only to national and state parties having granted a symbol and proven their popularity among the electorate, and (ii) in the short-term, State funding may be given only in kind, in the form of certain facilities to the recognised political parties and their candidates. However, despite strongly backing full State funding of elections principle, it stated that only partial State funding would be possible in the short-term given the prevailing economic condition of the country.

The 1999 report of the Law Commission of India concurred with the Indrajit Gupta Commission, stating that “it is desirable that total state funding be introduced, but on the condition that political parties are barred from raising funds from any other source”. It also agreed with the Indrajit Gupta Commission that only partial state funding was possible at the present time given the economic conditions of the country. Additionally, it strongly recommended that the appropriate regulatory framework be put in place with regard to political parties (provisions ensuring internal democracy, internal structures and maintenance of accounts, their auditing and submission to Election Commission) before state funding of elections is attempted.

The Report “Ethics in Governance” of the Second Administrative Reforms Commission also recommended that “a system for partial state funding should be introduced to reduce the scope of illegitimate and unnecessary funding of expenditure for elections.”

The National Commission to Review the Working of the Constitution, 2001, did not comment on the desirability of State funding of elections but reiterated the point of the Law Commission that the appropriate framework for regulation of political parties would need to be implemented before proposals for State funding are considered. The

Election Commission is not in favour of state funding as it will not be possible to prohibit or check candidate's own expenditure or expenditure by others over and above that which is provided by the State. The Election Commission's view is that for addressing the real issues, there have to be radical changes in the provisions regarding receipts of funds by political parties and the manner in which such funds are spent by them so as to provide for complete transparency in the matter.



## VI. Conduct and Better Management of Elections

*The massive size of the Indian electorate makes general elections an enormous and daunting exercise. But this should not prevent us from finding more ways of making the election process free and fair.*

According to the Election Commission of India, the size of the electorate for the 2009 elections to the 15<sup>th</sup> Lok Sabha was more than 714 million. The National Commission to Review the Working of the Constitution, 2001, noted in its report that “the holding of general elections in India is equal to holding them for Europe, the United States, Canada, and Australia all put together.” Successful administration of the electoral process requires more than 50 lakh personnel and almost 1 million (10 lakh) polling booths. Millions of security personnel are required to promote a peaceful and incident-free voting experience.

Previous committees have recommended several changes in the conduct of the electoral process to properly address the challenges mentioned above. Major problems in the conduct of elections and proposed solutions are outlined below.

### 6.1 Irregularities in polling

Irregularities in polling procedure have been identified as important issues that need to be addressed in our electoral system. Rigging of elections have become common facets of our electoral system.

#### 6.1.1 Importance of electoral rolls

The National Commission to Review the Working of the Constitution, 2001, rightly noted that “The electoral process begins with the preparation of electoral rolls. If the rolls are incomplete or defective, the whole process is vitiated.” A Consultation Paper to the National Commission to Review the Working of the Constitution noted that “political parties and influential persons manage large-scale registration of bogus voters, or large-scale deletion of names of “unfriendly” voters.” The Goswami Committee on Electoral Reforms stated that irregularities in electoral rolls are exacerbated by purposeful tampering done by election officials who are bought by vested interests or have partisan attitudes.

Aside from intentional tampering, the structure of the system set up to create electoral rolls may contribute significantly to the widespread inaccuracies. In the current system, the Election Commission prepares electoral roles for Parliamentary and

Assembly constituencies, and the State Election Commissions prepare electoral rolls for local elections. While some states have coordinated their electoral rolls with those prepared by the Election Commission, there are still some states that significantly modify them. Some states even have different qualifying dates for the State rolls from the Election Commission rolls, which is inefficient for both the Commissions involved and confusing for the voter. The duplication of essentially the same task between two different agencies is also an unnecessarily costly affair.

#### ❖ Recommendations

The National Commission to Review the Working of the Constitution recommended in its 2001 report that an automated online database should be created by the Election Commission. In such a system, each voter would be provided with a unique bar-coded ID number, assigned for life. This bar-coded ID card and number could be verified at the polling booth by a hand held device. The electoral rolls in this system could be prepared at the panchayat or district level. Along with this, the Commission also recommended that the task of electoral roll preparation should not be duplicated as it is now, possibly by entrusting it to an outside agency under the supervision of the Election Commission. A centralized, computerized system could provide for the easy public availability of the electoral rolls as well.

The 2004 report on Proposed Electoral Reforms, the Election Commission concurred with the National Commission to Review the Working of the Constitution that there should be common rolls for all elections, with the Parliamentary and Assembly rolls adapted to suit the needs of local **bodies elections**. This is primarily recommended by the Commission for the purpose of saving on expenditure and to make the process more efficient.

The Goswami Committee of 1990 recommended that Post Offices should be the agencies for preparation and maintenance of electoral rolls. This solution may well be outdated in today's society where efficient computerized systems can be created. The Committee, did however, recommend a multi-purpose ID somewhat along the same lines as that proposed by the National Commission to Review the Working of the Constitution.

#### 6.1.2 Rigging through muscle power and intimidation

Rigging of elections is possible not just through tampering of booths, ballots, and electoral roles, but also out of sheer 'muscle power' and intimidation of voters.

#### ❖ Recommendations

The Goswami Committee Report of 1990 recommended that the Election Commission should be empowered to take strong action on the report of returning officers, election observers, or civil society in regards to booth capture or the intimidation of voters. The National Commission to Review the Working of the Constitution recommends that the Election Commission should have the power under Section 58A of the Representation of the People Act, 1951, to order a fresh election, void the election results, or order a re-poll in such cases. It further recommended that the Election Commission should make use of electronic surveillance equipment as a deterrent to booth capture or intimidation of voters.

## 6.2 Proliferation of candidates

There is a proliferation of candidates in Indian elections. According to the Election Commission of India, “too many candidates in the election fray puts unnecessary and avoidable stress on the management of elections and increases expenditure on account of security, maintenance of law and order, and requires extra number of balloting units of voting machines, etc”. It has been observed that a large number of candidates in the fray are non-serious candidates, which according to the Law Commission of India, makes elections “cumbersome, expensive and unmanageable – indeed farcical in some cases.” The National Commission to Review the Working of the Constitution notes that out of the 1900 independent candidates who contested the general election of 1998, only six actually won.

### ❖ Recommendations

The Election Commission of India, Law Commission of India, and National Commission to Review the Working of the Constitution all recommend measures to check the proliferation of non-serious candidates. In their reports, all the Committees mentioned recommended increasing the security deposit of candidates. The recommendations of these Committees were enacted through the Representation of the People (Amendment) Act, 2009, which increased the amount. The Election Commission further recommends that it be given the power to prescribe deposit amounts prior to each election so that repeated amendments to the Representation of the People Act are not necessary.

The Law Commission of India Report on Reform of the Electoral Laws goes even further and declares that independent candidates should be debarred from contesting elections to the Lok Sabha.

The National Commission to Review the Working of the Constitution proposed a system of discouraging independent candidates from running for office, by implementing the following measures: (i) the existing security deposits for independent candidates should be doubled, (ii) the deposit should be doubled every year for those independents who fail to win and still keep contesting elections, (iii) if any independent candidate fails to win five percent of the vote or more, he should be debarred from contesting as an independent for the same office for six years, (iv) an independent candidate who loses election three times consecutively for the same office as an independent should be permanently debarred from contesting election to that office.

### 6.3 Measures for Election Commission

The Election Commission of India has recommended a number of improvements in electoral law to allow it to continue functioning in an effective and independent manner.

#### ❖ Recommendations

Clause (5) of Article 324 of the Constitution, inter alia, provides that the Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court. However, Clause (5) of Article 324 does not provide similar protection to the Election Commissioners and it only says that they cannot be removed from office except on the recommendation of the Chief Election Commissioner. The provision, in the opinion of the Election Commission, is inadequate and requires an amendment to provide the very same protection and safeguard in the matter of removability of Election Commissioners from office as is provided to the Chief Election Commissioner. The Election Commission recommends that constitutional protection be extended to all members of the Election Commission.

The Election Commission also recommends that the Secretariat of the Election Commission, consisting of officers and staff at various levels is also insulated from the interference of the Executive in the matter of their appointments, promotions, etc., and all such functions are exclusively vested in the Election Commission on the lines of the Secretariats of the Lok Sabha, and Rajya Sabha, Registries of the Supreme Court and High Courts etc.

The third recommendation of the Election Commission is that its budget be treated as “Charged” on the Consolidated Fund of India.

## **6.4 Restrictions on Government sponsored advertisements**

It has been noted by the Election Commission that on the eve of election, the Central and various State Governments are able to advertise for the purpose of influencing elections, justifying it by providing information to the public. The expenditure on such advertisements is likely incurred from the public exchequer. The Election Commission feels this practice allows the misuse of public funds and provides the ruling party an undue advantage over other parties and candidates.

### **❖ Recommendations**

The Election Commission proposes that where any general election is due on the expiration of the term of the House, advertisements of achievements of the governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House, and in case of premature dissolution, from the date of dissolution of the House. Here, advertisements / dissemination of information on poverty alleviation and health related schemes could be exempted from the purview of such a ban. The Commission also recommends that there should be specific provisions that name or symbol of any political party or photograph of any of the leaders of the party should not appear on such hoardings/banners.

## **6.5 Restriction on the number of seats which one may contest**

Section 33 of the Representation of the People Act, 1951, a person can contest a general election or a group of bye-elections or biennial elections from a maximum of two constituencies. There have been several cases where a person contests election from two constituencies, and wins from both. In such a situation he vacates the seat in one of the two constituencies. The consequence is that a bye-election would be required from one constituency which apart from involving avoidable labour and expenditure on the conduct of that bye-election.

### **❖ Recommendations**

The Election Commission is of the view that the law should be amended to provide that a person cannot contest from more than one constituency at a time.

## **6.6 Amendment of law to provide for filing of election petition even against defeated candidates on the ground of corrupt practice**

As per the existing law, election petition can be filed only for challenging the election of a returned candidate. If a defeated candidate has indulged in corrupt practice, there is no provision for election petition or a declaration against such candidate.

❖ Recommendations

The Election Commission has recommended in its letter dated 24<sup>th</sup> April 2009 that the law should be amended to provide for filing election petitions in cases of commission of corrupt practice by a losing candidate. In the same letter, it was also suggested that the period by which the candidates are required to file their account of election expenses should be reduced to 20 days from the present 30 days, so that more time is available for others to scrutinize the accounts and to take the matter to the Court in Election Petitions in cases of spending in excess of the ceiling. Alternatively, the period for filing Election Petition may be increased to 60 days.

## 6.7 Restrictions on opinion polls

Previous committees on electoral law have debated the possibility of whether opinion polls are misused to manipulate voters on the eve of elections.

❖ Recommendations

The Election Commission had recommended that there should be provision in the law putting restrictions on publishing the results of opinion polls and exit polls for a specified period during the election process. By the recent amendment of the Representation of the People Act, 1951, a new Section 126A has been inserted in the Act prohibiting conducting of exit polls and publishing results in any manner, during the period starting from 48 hours before the close of poll in an election. In a multi-phased election, the prohibition will last till the close of poll in the last phase.

However, the amendment does not cover opinion polls. Thus, results of opinion poll can be published even on the day of election polling. Although dissemination of results of opinion polls would be prohibited during the 48 hours period before the conclusion of poll by virtue of Section-126 (1) (b) on electronic media, there is no provision of law to restrict dissemination through print media (since 126 (1) (b) does not apply to print media).

## 6.8 Prohibition of Campaign during the Last 48 Hours

Section 126 of the Representation of the People Act, 1951, prohibits electioneering activities by way of public meetings, public performance, processions, advertisements through

cinematograph, television or similar apparatus during the period of 48 hours before the time fixed for conclusion of poll. Thus, political advertisements in TV and Radio are prohibited during these 48 hours. However, since this Section does not refer to print media, the political parties and candidates issue advertisements in newspapers during this period including on the day of poll. They also undertake house-to-house visits. The logic behind the restriction on campaigning during the 48 is to allow citizens to decide their option without being prejudiced by any last moment appeals.

#### ❖ Recommendations

The Election Commission recommends that Section 126 should apply to print media as well. Furthermore, it recommends that house to house visits by candidates/supporters should be specifically prohibited during the said 48 hour period. It is the opinion of the Commission that the house-to-house visit/ contact in the last hours provides that opportunity for indulging in malpractices such as trying to bribe electors with cash.

### **6.9 Ban on transfer of officers likely to serve elections**

It is the opinion of the Election Commission that such transfers, often made on grounds other than administrative exigencies, disrupt the arrangements then underway for conducting smooth and peaceful elections.

#### ❖ Recommendations

The Election Commission had recommended in 1998 that Section 13 CC of the Representation of the People Act, 1950, and Section 28A of the Representation of the People Act, 1951 should be amended to provide that no transfer shall be made, without the concurrence of the Commission, of any officer referred to therein, as soon as a general election/bye-election becomes due in any Parliamentary or Assembly Constituencies. The Commission has suggested that in the case of a general election either to the House of the People or to State Legislative Assembly, the ban may come into operation for the period of six months prior to the date of expiry of the term of the House concerned, and in case of premature dissolution, from the date of dissolution of the House.

### **6.10 False declaration in connection with elections to be an offence**

Section 31 of the Representation of the People Act, 1950, contains a provision providing for punishment with imprisonment up to one year for making a false declaration in connection with preparation/revision of electoral roll. There is no such provision in the Representation

of the People Act, 1951, in relation to conduct of elections. During the course of an election, the Election Commission has observed several cases of such false statements/declarations before the election authorities such as by candidates, representatives of political parties etc. A provision for punishment for false statement / declaration would be a deterrent against frivolous complaints and petitions.

❖ Recommendations

The Election Commission recommends that there should be a provision for penal action against those making any false declarations in connection with an election. Such a provision would provide for a similar punishment for false declarations in connection with conduct of elections, such as false complaints of booth capturing or false complaints about the conduct of election officials.

### **6.11 Punishment for electoral offences to be enhanced**

Undue influence and bribery at elections are electoral offences under Sections 171B and 171C, respectively, of the IPC. These offences are non-cognizable offences, with punishment provision of one year's imprisonment, or fine, or both. Under Section 171G, publishing a false statement in connection with an election with intent to affect the result of the election is only punishable with a fine. Section 171H provides that incurring or authorizing expenditure for promoting the election prospects of a candidate is an offence. However, punishment for an offence under this Section is a small fine of Rs 500.

❖ Recommendations

The Election Commission feels that considering the gravity of the offences under the aforesaid sections in the context of free and fair elections, the punishments under all the four sections should be enhanced. This was recommended by the Commission in 1992.

### **6.12 Restoring the cycle of biennial retirement in the Rajya Sabha/Legislative Councils**

A petition was submitted in the Patna High Court last year on the topic of restoring the cycle of biennial retirement in the Rajya Sabha and Legislative Councils. The High Court, in its order, observed that the Government and the Election Commission may consider the matter for a solution.

❖ Recommendations



In its December 2004 the Election Commission reiterated the earlier proposal for amending the law so as to ensure retirement of 1/3<sup>rd</sup> of the members in the Rajya Sabha and State legislative councils after every two years.

### **6.13 Expenditure ceiling for election to Council Constituencies**

Presently the expenditure ceiling for candidates applies only for the Lok Sabha and Assembly elections.

#### **❖ Recommendations**

The Commission has in its letter dated 30<sup>th</sup> May 2007 proposed that this should also be applicable in the case of legislative council elections from the Council Constituencies. The candidate should also be required to submit the account of election expenses.

### **6.14 Misuse of religion for electoral gain by political parties**

The Liberhan Ayodhya Commission of Inquiry recommended, inter alia, that complaints of misuse of religion for electoral gain should be speedily investigated into by the Election Commission. The Election Commission informed the government (Letter dated January 29, 2010) that such investigations should be carried out by the investigating agencies of the state. However, the Election Commission invited the attention of the government to the Representation of the People (Second Amendment) Bill, 1994, whereby an amendment was proposed providing for provision to question acts of misuse of religion by political parties before a High Court. Similar recommendations made by the Goswami Committee were included in a Bill introduced in the Rajya Sabha in May 1990. The Government withdrew this Bill in 1993, stating that a revised Bill would be introduced. However, these provisions have never been considered since then.

#### **❖ Recommendations**

The Goswami Committee on Electoral Reforms, in its report in 1990, made the following recommendations: “Election Commission shall have the power to make recommendations to the appropriate authority (a) to refer any matter for investigation to any agency specified by the Commission (b) Prosecute any person who has committed an electoral offence under this Act or (c) appoint any special court for the trial of any offence or offences under this Act (RP Act 1951).”

The Election Commission recommends that abovementioned provisions should be reconsidered.

### **6.15 Totalizer for counting of votes**

Currently votes are tallied by individual EVMs at individual polling stations. This exposes the trend of voting in a particular voting station, making the electorate of that area vulnerable to backlash by candidates or elected officials in retribution.

#### ❖ Recommendations

The Election Commission recommends an amendment be made to the Conduct of Elections Rules to provide for the use of ‘totalizer’ for counting of votes cast at more than one polling station where EVMs are used, so that the trend of voting in individual polling station areas does not get divulged and the electors may not be subjected to any harassment or victimization on that account.

### **6.16 Re-examination of the provision of Teachers’ and Graduates’ Constituencies**

Under Article 171 (3) (b) & (c) of the Constitution, one-twelfth of the seats in the Legislative Councils are to be filled up by graduates and another one-twelfth by teachers who have been engaged in teaching in educational institutions not lower in standard than that of a secondary school. As per the provisions of this Article, a teacher teaching in the lower primary section in a secondary school is eligible to be enrolled as an elector for the Teachers’ constituency, whereas a teacher teaching in the middle school in a middle/primary school will not be eligible to be an elector.

#### ❖ Recommendations

The Election Commission recommends that the provisions of Article 171 (3) (c) should be amended so as to provide that all teachers of specified institutions irrespective of the level of the school would be eligible to be electors for the Teachers’ constituency. Furthermore, the Commission is of the view that the concept of special representation for graduates and teachers should itself be reconsidered.

### **6.17 Victimization of officers drafted for election duties**

The Election Commission utilizes the services of a large number of government officers for election duties, who perform important statutory functions in connection with preparation of electoral rolls and conduct of elections. The Election Commission has observed many of these officers are later subjected to humiliation and even vindictive disciplinary action by the government.

❖ Recommendations

The Election Commission recommends that in the case of the government officers performing statutory functions in connection with preparation of electoral rolls, or in the conduct of elections, consultation with the Election Commission and its concurrence should be made compulsory before initiating any disciplinary/legal proceedings by the government. In the case of those officers who have ceased to hold election related positions, consultation with the Commission should be mandatory for initiating any disciplinary/legal proceedings for a period of one year from the date on which the officer ceased to hold election related position.

### **6.18 Disqualification for failure to lodge election expenses**

Under Section 10A of the Representation of the People Act, 1951, the Election Commission may disqualify a candidate for three years for failure to lodge the account of election expenses as per the requirement of the law. Thus, the period of disqualification may end by the time of the next general election to that House. Therefore, no effective purpose is served by the disqualification (except that the person cannot contest in the odd bye-election that may be held during the 3 year period).

❖ Recommendations

The Election Commission recommends that the period of disqualification under Section 10A should be increased to 5 years, so that the disqualified person does not become a candidate at the next general election to the House concerned.

## VII. Regulating Political Parties

Proliferation of political parties is stated as a major concern by many previous committees. Section 29A of the Representation of the People Act, 1951, allows for small groups of people to form political parties by making only a simple declaration.

In its 2001 report, the National Committee to Review the Working of the Constitution states that “it is a desirable objective to promote the progressive polarisation of political ideologies and to reduce less serious political activity.”

According to the Election Commission, a large number of non-serious parties create excessive load on the electoral system. Of the more than 1100 parties registered with the Election Commission in 2009, only about 360 actually contested the general election that year. The Commission also states that part of the problem is that there is no specific provision to de-register a party.

The National Commission to Review the Working of the Constitution adds that while proliferation of smaller parties creates “confusion”, any tightening of regulation on the subject must also take into account “the need to reflect the aspirations of a plural society.”

### ❖ Recommendations

The Election Commission proposes that an amendment be made to Section 29A of the Representation of the People Act, 1951, adding a clause “authorising the Election Commission to issue necessary orders regulating registration and de-registration of political parties.”

The National Commission to Review the Working of the Constitution, 2001, recommended that “the Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller parties is discouraged. Only parties or a pre-poll alliance of political parties registered as national parties or alliances with the Election Commission be allotted a common symbol to contest elections for the Lok Sabha. State parties may be allotted symbols to contest elections for State Legislatures and the Council of States (Rajya Sabha).”

Furthermore, the above Commission recommended that “the rules and by-laws of the parties seeking registration should include provisions for:

- (a) A declaration of adherence to democratic values and norms of the Constitution in their inner party organisations,
- (b) A declaration to shun violence for political gains.
- (c) A declaration not to resort to casteism and communalism for political mobilisation, but to adhere to the principles of secularism in the achievement of their objectives,
- (d) A provision for party conventions to nominate and select candidates for political offices at the grass root and State levels
- (e) A code of conduct (which each political party should evolve for itself),
- (f) Some institutional mechanism for planning, thinking, and research on crucial socio-economic issues facing the nation and educational cells for socialising their party cadres and preparing them for responsibilities of governance,
- (g) Implementation of legal provisions regarding representation to women and weaker sections of society in party offices and in candidacy for elections to Houses of Legislatures”

## VIII. Auditing of Finances of Political Parties

As mentioned previously in this report, the high cost of elections provides a logic for corruption in the public arena. This affects not only candidates, but parties as well.

In an order dated March 27, 2003, the Election Commission of India issued an order, in pursuance of the Supreme Court judgment dated March 13, 2003 in the *Peoples Union for Civil Liberties & Another Vs. Union of India* case, that candidates for electoral office must submit an affidavit disclosing his assets and liabilities. This order, however, does not apply to political parties.

### ❖ Recommendations

The 2004 report of the Election Commission declared that political parties should be required to publish their accounts (or at least an abridged version) annually for information and scrutiny of the general public and all concerned, for which purpose the maintenance of such accounts and their auditing to ensure their accuracy is a pre-requisite. The auditing may be done by any firm of auditors approved by the Comptroller and Auditor General. The audited accounts should then be made public.

The Election and Other Related Laws (Amendment) Bill, 2002 (introduced in Lok Sabha on 19<sup>th</sup> March, 2002) sought to introduce section 29D in the Representation of the People Act, 1951 in this regard. The Department-Related Parliamentary Standing Committee on Home Affairs while examining the matter desired that the audit of accounts of donation received by the political party may be done through Chartered Accountants appointed by it as at present, as per the provisions of the Income-tax Act (section 13A). In view thereof the Committee recommended deletion of entire section 29D in Clause 2 of the Bill.

In 2001 the National Commission to Review the Working of the Constitution recommended that “audited political party accounts like the accounts of a public limited company should be published yearly with full disclosures under predetermined account heads”.

The Law Commission, in its 1999 report, recommended steps be taken to amend the Representation of the People Act, 1951, to insert a new section 78A requiring the maintenance, audit and publication of accounts by political parties. To enforce compliance, Section 78A would prescribe the following penalties: (i) a political party

which does not comply shall be liable to pay a penalty of Rs. 10,000/- for each day of non-compliance and so long as the non-compliance continues; (ii) If such default continues beyond the period of 60 days, the Election Commission may de-recognise the political party after affording a reasonable opportunity to show cause; (iii) If the Election Commission finds on verification, undertaken whether *suo motu* or on information received, that the statement of accounts filed is false in any particular, the Election Commission shall levy such penalty upon the political party, as it may deem appropriate besides initiating criminal prosecution as provided under law.

In order to further transparency in the funding of political parties, the Election Commission recommends the following measures: (i) any receipt by a political party either directly or through the executives or the party functionaries should be deposited in the Bank Accounts of such parties, (ii) all payments by the political party exceeding Rs.20,000/- to a person should be made by crossed account payee cheque and (iii) all contributions or donations or gifts by any person to a party functionary other than those by his/her relative(s) shall be deemed as receipts of the political party and it will be accounted for by the political party.

## IX. Adjudication of Election Disputes

Disputes relating to elections of the State Legislature and Union Legislature are adjudicated upon exclusively by the High Courts before whom election petitions under Section 80 and 80-A of the Representation of Peoples Act, 1951, are filed.

Sections 86(6) and 86(7) of the Representation of the People Act, 1951, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation and also as far as practicably possible conduct proceedings of an election petition on a day to day basis.

In practice, however, cases involving election petitions are rarely resolved in a timely manner. According to the report “Ethics in Governance” of the Second Administrative Reforms Commission, “such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petition infructuous.

### ❖ Recommendations

The National Commission to Review the Working of the Constitution, recommended that special election benches designated for election petitions only should be formed in the High Court.

The Election Commission has also made a similar recommendation.

The Second Administrative Reforms Commission, in its report “Ethics in Governance”, recommended in detail that:

“Special Election Tribunals should be constituted at the regional level under article 329B of the Constitution to ensure speedy disposal of election petitions and disputes within a stipulated period of six months. Each tribunal should comprise a High Court judge and a senior civil servant with at least 5 years experience in the conduct of elections (not below the rank of an Additional Secretary to the Government of India/Principal Secretary of a State Government). Its mandate should be to ensure that all election petitions are decided within a period of six months as provided by law. The Tribunals should normally be set up for a term of one year only, extendable for a period of 6 months in exceptional circumstances.’



## X. Review of Anti-Defection Law

In the report “Ethics in Governance” of the Second Administrative Reforms Commission, it is noted that “Defection has long been a malaise of Indian political life. It represents manipulation of the political system for furthering private interests, and has been a potent source of political corruption.” The report further notes that “there is no doubt that permitting defection in any form or context is a travesty of ethics in politics.”

The Anti-Defection provisions of the Tenth Schedule of the Constitution, enacted in 1985, fixed a certain number above which group defections were permitted. The National Committee to Review the Working of the Constitution noted that although individual defections became rare after this, group defection were “permitted, promoted and amply rewarded.”

The 91<sup>st</sup> Amendment to the Constitution, 2003, changed this by making it mandatory for defectors to resign their positions regardless of whether they defected as an individual or as part of a group.

Currently the issue of disqualification of members of Parliament or a State Legislature is decided by the Speaker or Chairman of the concerned House. Aside from those concerning the Tenth Schedule all other matters of post-election disqualification are decided by the President/Governor, on the advice of the Election Commission.

The Election Commission, in its 2004 report, noted that “all political parties are aware of some of the decisions of the Hon’ble Speakers, leading to controversies and further litigation in courts of law.” The National Committee to Review the Working of the Constitution noted that “some of the Speakers have tended to act in a partisan manner and without a proper appreciation – deliberate or otherwise – of the provisions of the Tenth Schedule.”

### ❖ Recommendations

The National Commission to Review the Working of the Constitution recommend that “the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.”

The Election Commission and “Ethics in Governance” report of the Second Administrative Reforms Commission also both recommended that the issue of

disqualification on grounds of defection should be decided by the President/Governor concerned under the advice of the Election Commission, instead of relying on the objectivity of the decision from the Speaker.

## **XI. Annexure: Update on Election Commission Recommendations**

The Ministry of Law and Justice has prepared a table reviewing progress made on the recommendations suggested by the Election Commission in 2004.

In July, 2004, the Election Commission has sent a set of 22 proposals on Electoral Reforms. Further, the entire matter of electoral reforms was referred to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination by the Chairman, Rajya Sabha in the year, 2005.

Out of 22 proposals the Hon'ble Standing Committee gave its recommendations on six proposals including criminalization of politics. The Department has taken initiative and relevant provisions of the Representation of the People Act, 1950 and Representation of the People Act, 1951 have been amended to provide for (1) Appointment of Appellate Authority in districts against orders of Electoral Registration Officers; (2) to increase the security deposit of candidates; (3) Exit Polls; (4) All officials appointed in connection with conduct of elections to be included in clause (7) of section 123; and (5) Simplification of procedure for disqualification of a person found guilty of corrupt practice. The Hon'ble Standing Committee did not favour the proposal on carrying out any amendment relating to the Criminalisation of politics.

Brief details of each of the proposal and remarks thereon are as under:-

Sl. No.	Proposal of the Election Commission	Status/Remarks.
1.	Affidavits to be Filed by Candidates on Criminal Antecedents, Assets, etc.	This relates to the merger of two affidavits filed by a candidate one in terms of section 33A of the Representation of the People Act, 1951, read with rule 4A of the Conduct of Election Rules, 1961(in Form 26) and another in the format prescribed by the Commission vide its order dated 27.3.2003, in pursuance of the Hon'ble Supreme Court's judgment dated 13.3.2003 in Civil Appeal No. 490 of 2002 (Peoples Union for Civil Liberties & Another Vs. Union of India).
2.	Need to Increase the Security Deposit of Candidates	Enacted <i>vide</i> Representation of the People (Amendment) Act, 2009 (Act 41 of 2009).
3.	Criminalisation of Politics  This proposal relates to disqualify any persons accused of an offence punishable by imprisonment for five years or more, from contesting elections even when trial is pending, provided charges have been framed against him by a competent court.	The Government had requested the Parliamentary Standing Committee to give its recommendations on the proposal of the Election Commission of India. The Committee in its Eighteenth Report on the subject <i>inter alia</i> disagreed with the aforesaid proposal as it is a major departure from the law of the land that a person is not guilty until he is convicted by the highest court of the land. The Committee, however, recommended that proclaimed absconders under section 82 of the Criminal Procedure Code be disqualified from contesting polls.
4.	Restriction on the Number of Seats from which One May Contest  This proposal is to amend the law to provide that a person cannot contest from more than one constituency at a time or if the present provision is retained then there should be a provision which would mandate to deposit a definite sum in case a person get elected from both seats.	In the all party meeting held on 22.5.1998, it was decided to retain the present provision of allowing a person to contest from two constituencies of same nature.

5.	Exit Polls and Opinion Polls	Enacted <i>vide</i> Representation of the People (Amendment) Act, 2009 (Act 41 of 2009) putting a restriction on publication and dissemination of results of exit polls. Restriction of opinion polls needs to be examined.
6.	<p>Prohibition of Surrogate Advertisements in Print Media.</p> <p>Section 127A of the Representation of the People Act, 1951 may be suitably amended, adding a new sub-section (2A) to the effect that in the case of any advertisements / election matter for or against any political party or candidate in print media, during the election period, the name and address of the publisher should be given along with the matter / advertisement. Sub-section (4) should also be suitably amended to include in its ambit the new proposed sub-section.</p>	Section 127A deals only with publication of pamphlets, posters, etc., but does not include advertisement in newspapers. The said section can be amended so as to include advertisement in print media also. However, the matter of regulating advertisements in the print media pertains to the Ministry of Information and Broadcasting and Press Council of India and the proposal can be considered on the basis of inputs from them.
7.	Negative / Neutral Voting	The Committee on Electoral Reforms (Dinesh Goswami Committee) did not favour it and was of the view that it does not serve any purpose.
8.	Appointment of Appellate Authority in Districts against Orders of Electoral Registration Officers	Enacted <i>vide</i> Representation of the People (Amendment) Act, 2009 (Act 41 of 2009).
9.	Compulsory Maintenance of Accounts by Political Parties and Audit thereof.	The Election and Other Related Laws (Amendment) Bill, 2002 (introduced in Lok Sabha on 19 <sup>th</sup> March, 2002) sought to introduce section 29D in the Representation of the People Act, 1951 in this regard. The Department-Related Parliamentary Standing Committee on Home Affairs while examining the matter desired that the audit of accounts of donation received by the political party may be done through Chartered Accountants appointed by it as at present, as per the provisions of the Income-tax Act (section 13A). In view thereof

		the Committee recommended deletion of entire section 29D in clause 2 of the Bill.
10.	<p>Government Sponsored Advertisements.</p> <p>The Commission proposes that where any general election is due on the expiration of the term of the House, advertisements of achievements of the governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House.</p>	<p>The proposal requires further examination. Advertisements on poverty alleviation and health related schemes could be exempted. Advertisements revealing information on matters of urgent public interest could also be exempted. Further, since advertisements could be prohibited from carrying the name of any political party or photographs of leaders and Ministers.</p>
11.	<p>Political Advertisements on Television and Cable Network.</p> <p>This relates to consider amending the relevant provisions of the Cable Television Network (Regulation) Rules, 1994 to provide for suitable advertisement code and monitoring mechanism.</p>	<p>The issue of advertisements on television and cable networks, led to a lot of confusion during the recent general election. The Cable Television Network (Regulation) Rules, 1994, prohibit advertisements of political nature.</p> <p>The matter pertains to the Ministry of Information and Broadcasting and that Ministry is able to judge the feasibility of evolving a suitable advertisement code and monitoring mechanism for advertisement on television and cable networks in consultation of the Election Commission and Legislative Department.</p>
12.	<p>Composition of Election Commission and Constitutional Protection of all Members of the Commission and Independent Secretariat for the Commission.</p>	<p>It was decided to include it as a proposal for regional and national consultation.</p>
13.	<p>Expenses of Election Commission to be Treated as Charged.</p>	<p>The proposal to make the expenses of the Election Commission of India 'charged' was considered by the Dinesh Goswami Committee but was not favoured. In 1994, the Government, however, introduced the Election Commission (Charging of Expenses on the Consolidated Fund of India) Bill, 1994 in Lok Sabha on 16.12.94 which lapsed on the dissolution of the Tenth Lok Sabha. The Department-Related</p>

		<p>Parliamentary Standing Committee on Home Affairs in its 24<sup>th</sup> Report on the said Bill presented to Rajya Sabha on 28.11.1995 and was of the considered view that there is no need of passing the proposed Bill and recommends that the Bill be dropped</p> <p>The Election Commission of India again made a similar proposal in 1997 which was placed before political parties in the all party meeting held on 22.5.1998 but no view was taken. Again, the Election Commission of India made the same proposal in May, 2003 and on the direction of the then Hon'ble Prime Minister the same was placed before the political parties in the all party meeting held on 29.10.2003. The debate on the proposal remained inconclusive.</p>
14.	Ban on Transfers of Election Officers on the Eve of Elections	This is to amend section 13CC of the Representation of the People Act, 1950, and section 28A of the Representation of the People Act, 1951 to provide that no transfer shall be made, without the concurrence of the Commission, of any officer referred to therein, as soon as a general election/bye-election becomes due in any Parliamentary or Assembly Constituencies.
15.	All Officials Appointed in Connection with Conduct of Elections to be included in Clause (7) of Section 123.	Enacted <i>vide</i> Representation of the People (Amendment) Act, 2009 (Act 41 of 2009).
16.	<p>Anti-Defection Law</p> <p>The question of disqualification of members on the grounds of defection should also be decided by the President and Governors, on the opinion of the Election Commission.</p>	No view has been taken.
17.	<p>Use of Common Electoral Rolls at Elections Conducted by the Election Commission and the State</p>	The matter has been examined and decided to await the outcome of the discussion between the Election Commission and State Election Commissions to sort out the modalities in this

	Election Commissions	regard.
18.	Simplification of Procedure for Disqualification of a Person Found Guilty of Corrupt Practice.	Enacted <i>vide</i> Representation of the People (Amendment) Act, 2009 (Act 41 of 2009).
19.	Same Number of Proposers for all Contesting Candidates -Amendment of Section 33 of the Representation of the People Act, 1951	It was decided to include it as a proposal for regional and national consultation.
20.	Making of False Declaration in Connection with Election to be an Offence.  Making of any false statement or declaration before the Election Commission, Chief Electoral Officer, District Election Officer, Presiding Officer or any authority appointed under the Representation of the People Act, 1951, in connection with any electoral matter should be made an electoral offence under the said Act.	The various legal provisions required to curb the willful furnishing of incorrect information in electoral procedures to ensure the free and fair election are already there in the Election Laws. Further, keeping in view a large population of this country being illiterate, there would be frequent instances of furnishing incorrect information inadvertently or without any malafide intention by the common man while the process of preparation of electoral rolls, etc. and hence, the proposal may create the fear in the minds of people abstaining themselves from the democratic process of the country.
21.	Rule Making Authority to be Vested in Election Commission  Making authority under the Representation of the People Act, 1950 and Representation of the People Act, 1951, should be conferred on the Election Commission, instead of on the Central Government, who should, however, be consulted by the Election Commission while framing any rule.	Rule making power has to be vested only with the Government since rules are in the nature of subordinate legislation, the making of it shall be only with the Government which is answerable to Parliament. Rules are required to be laid before Parliament and can be modified and nullified if the Houses of Parliament resolve to do so. If rules were to be made by the Election Commission then amendment or modification by Parliament may lead to controversy.
22.	Registration and De-registration of Political Parties - Strengthening of Existing Provisions  Under the existing section 29A of the Representation of the People Act, 1951,	In view the growing number of political parties registered with the Election Commission for perpetuity availing all the facilities like, tax exemption, political fund contributions, whereas the number of political parties regularly contest elections being limited to



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	another clause may be introduced authorising the Election Commission to issue necessary orders regulating registration and de-registration of political parties.	certain number of registered political parties, it is worthwhile to consider the proposal of the Election Commission.
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In addition to the aforesaid 22 proposals the Election Commission of India has made, the Ministry of Law has a certain other proposals on electoral reforms, which are as under:-

(1) Election Expenditure in respect of the Teachers and Graduates constituencies:-	<p>Under section 77 and 78 of the R.P. Act, 1951 every candidate in the election to the Lok Sabha and the Legislative Assemblies of State/UTs is required to maintain correct account of expenditure incurred/authorized in connection with his election and to lodge it with the DEO within the 30 days of election, whereas rule 90 of the Conduct of Elections Rules 1961 has prescribed a ceiling for expenditure that can be incurred in connection with these elections. However, there is no such provision under election laws requiring maintaining or lodging the account of election expenses or prescribing any ceiling of expenditure in the case of elections to the Council of States and the State Legislative Council.</p> <p>The Election Commission is of the view that in the interest of free and fair election, there is urgent need to bring the elections to the Legislative Councils from the Teachers and Graduates' constituencies within the ambit of section 77 and 78 of the RP Act, 1951 and also prescribing a ceiling of expenditure that can be incurred/authorized in these elections.</p>
(2) Amendment to the Conduct of Election Rules, 1961 to provide for use of Totaliser for counting of Votes recorded in EVMs.	No view has been taken.
(3) Restoration of Cycle of Rajya Sabha and Legislative Council:-	Under article 80 and 171 of the Constitution every second year as nearly as possible one-third member of the Council of State and Legislative Council shall retire every second year. Due to non availability of the Legislative Assembly in certain States/Union Territory for continuous

	<p>years, the cycle of the Rajya Sabha could not be maintained and eventually all the Members of the Council of States from that States get elected for a period of Six years. A similar situation is being faced in the case of Legislative Council in respect of the States of Bihar, U.P., Karnataka etc., due to non availability of Local Bodies, Assemblies for longer periods.</p> <p>In this regard it may be submitted that the Election Commission has suggested some methods to be adopted to sort out these eventualities in future.</p> <p>The Ld. Attorney General for India is of the view that the sanctity of the provisions of the Constitution may be maintained and the cycle of retirement of the Members of Rajya Sabha and Legislative Council should be restored.</p>
<p>(4) Appointment of Chief Election Commissioner (CEC) and other Election Commissioners (EC) and consequential matter:-</p>	<p>One of the Chief Election Commissioners has requested the Government to have a collegium consisting of the Prime Minister and Leader of Opposition etc. who is empowered to make recommendations for appointments of the CEC and ECs. Further, it has also been suggested that there should be complete ban for ten years after retirement from the post of CEC to any political post.</p>